S.B. Civil Revision Petition No.1059/97
Durga Shanker Vs. Union of India

Date of Order : 07/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rajveer Sharma, for petitioner
Mr. S.S. Hasan, for respondent

Instant revision petition has been filed by the decree-holder against the order dated 6th March, 1997 passed in Execution Application No.10/93 whereby it was observed by the Executing Court that since the decree has been satisfied by the judgment-debtor, no further orders are required to be passed.

Facts, in brief for adjudication of the dispute, are that petitioner joined service on 11th January, 1970, but being involved in a case of theft, a criminal case was instituted against him and was convicted, but released on probation vide order dated 10th February, 1975. The services of the petitioner were terminated on 21st May, 1975 because of the said conviction. It was further mentioned that in one another incident of 20th November, 1973 he committed a theft and criminal case was registered against him and after due trial, he was held guilty and convicted vide order dated 26th September, 1984.

The termination, which has been given effect to from 21st May, 1975, was challenged by filing a regular civil suit in which the order of his termination was set aside and vide judgment & decree dated 1st December, 1983, he was directed to be reinstated in service with all consequential benefits flowing thereof. The judgment of the trial court dated 1st December, 1983 was not challenged by the respondent herein.

The petitioner filed application for execution before the learned Executing Court for payment of salary in view of judgment & decree dated 1st December, 1983 and so also simultaneously filed application for payment of wages u/s.15(2) of Payment of Wages Act before the Prescribed Authority. The Authority under the Act passed order on 26th September, 1984 for making payment of wages to the petitioner upto the date of decree of reinstatement for a sum of Rs.1,07,000/-. Against which, the respondent preferred appeal which I have been informed has been rejected by the Appellate Court. It is also not disputed by the petitioner that what was finally awarded by the Prescribed Authority under the Payment of Wages Act for a sum of Rs.1,07,000/- has been received by the petitioner. In respect of the criminal case which was instituted on 20th November, 1973 in which he was finally convicted on 26th September, 1984, the respondent again passed a fresh order for his termination on 10th January, 1986.

Learned Executing Court after adjudication and taking into consideration the decree passed in favour of petitioner dated 1st December, 1983 finally recorded a finding that the decree has been satisfied and the wages upto the period of reinstatement as directed by the competent court have been satisfied. In such circumstances, no further order is required to be passed and consequently, the execution application was dismissed vide order impugned dated 6th March, 1997.

Counsel for petitioner submits that since the fresh order of termination was passed on 10th January, 1986 and the judgment & decree which has been passed in favour of the petitioner on 1st December, 1983 was with regard to reinstatement with all other benefits flowing thereof, as such he became entitled for salary upto the date of

fresh order of termination passed by the respondent dated 10th January, 1986. As such the very finding, which has been recorded by the learned Executing Court in holding the decree has been satisfied, is erroneous and is a gross material irregularity which has been committed in passing order impugned, which requires interference by this court.

Counsel for respondent, on the other hand, submits that decree in respect of which execution application was filed, was of 1st December, 1983 and in terms thereof, the petitioner was entitled for upto the date of order of decree and not for the period thereafter and once the same was satisfied which is not disputed by the petitioner as such no error has been committed by the learned Executing Court in passing order impugned and does not require interference.

I have considered the submissions of the counsel and perused material on record.

This fact remain undisputed that the decree which was passed in favour of petitioner whereby his termination was set aside and he was directed to be reinstated in service with all consequential benefits. So far as wages is concerned, for the period commencing from the date of termination till passing of decree dated 1st December, 1983 has been satisfied by the respondent. I find substance in the submission made by the counsel for respondent that once the decree which was in respect of reinstatement with all benefits flowing thereof has been satisfied by the judgment debtor, no further relief in the execution application could have been prayed for by the decree holder.

Once the decree has been satisfied by making payment of consequential benefits upto December, 1983

even if the petitioner was not reinstated in service will give him a fresh cause of action and will not make him entitle for claiming any benefits under the decree of which execution application was filed and looking to the fact that he was involved in criminal cases of theft and was finally convicted on 26th September, 1984 which arose for passing a fresh order of termination which has been given effect to from 10th January, 1986.

I do not find any error committed by the learned Executing Court in passing order impugned.

Consequently, the revision petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB